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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,849	06/25/2003	Mario Zamora	1894-05000	5532
7590	03/07/2005		EXAMINER	
JONATHAN P. OSHA			JACKSON, ANDRE K	
1221 McKinney Street				
SUITE 2800			ART UNIT	PAPER NUMBER
HOUSTON, TX 77010			2856	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

CT

Office Action Summary	Application No.	Applicant(s)	
	10/603,849	ZAMORA ET AL.	
	Examiner	Art Unit	
	André K. Jackson	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4,5,9-12 and 15-17 is/are rejected.
- 7) Claim(s) 3,6-8,13,14 and 18-20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4,5,9-12 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Opferkuch, Jr. et al.

Regarding claim 1, Opferkuch, Jr. et al. disclose in the patent entitled "Process for the disposal of sewage" a container (11) adapted to contain the fluid; a surface disposed within the container and adapted to urge the solid particles into a well (14) as the solid particles settle within the fluid (Figure 2) and where the well is non-centrally located within the container (Figure 2).

Regarding claim 2, Opferkuch, Jr. et al. disclose where the container includes a wall and the well is disposed at the disposed proximate to the wall of the container (Figure 2).

Regarding claim 4, Opferkuch, Jr. et al. disclose where the surface is inclined (Figure 2).

Regarding claim 5, Opferkuch, Jr. et al. disclose where the surface is curved (container is cylindrical) (Figure 2).

Regarding claim 9, Opferkuch, Jr. et al. disclose an insert disposed at the bottom of a cup containing a fluid having suspended solid particles; a well non-centrally located within the insert; and an upper surface disposed on the insert and adapted to direct settling particles toward the well (Figure 2).

Regarding claim 10, Opferkuch, Jr. et al. disclose where the well is disposed proximate to an outer edge of the insert (Figure 2).

Regarding claim 11, Opferkuch, Jr. et al. disclose where the upper surface is curved (container is cylindrical) and inclined (Figure 2).

Regarding claim 12, Opferkuch, Jr. et al. disclose where the upper surface (facing the fluid) further includes a first curved surface and a second curved surface (facing away from the fluid) (Figure 2).

Regarding claim 15, Opferkuch, Jr. et al. where the first curved surface (facing the fluid) and the second curved surface (facing away from the fluid) each have a central axis inclined toward the well (Figure 2).

Regarding claim 16, Opferkuch, Jr. et al. disclose disposing the fluid within a cup (11) (Figure 2) and extracting a first sample of fluid from a well in a non-centrally located position (14) within the cup (Figure 2).

Regarding claim 17, Opferkuch, Jr. et al. disclose where the well is in a position proximate to a wall of the cup (Figure 2).

3. Claims 3,6-8,13,14 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed 01/04/05 have been fully considered but they are not persuasive. Applicant has argued that item (14) or discharge port is different than the claimed well. The claim calls for a surface disposed within the container and adapted to urge the solid particles into a well as the solid particles settle within the fluid where the well is non-centrally located within the container. Opferkuch, Jr. et al. disclose where the discharge port (14) acts the same way as the claimed well. Opferkuch, Jr. et al. disclose where a funnel shaped portion is used to collect the flocculated solids where these solids are discharged from the vessel (Column 6, lines 35-38), which is the same as "a surface disposed within the container and adapted to urge the solid particles into a well."

Applicant has argued that the discharge port (14) is used to discharge solids not to collect solids. There is nothing in the claim that calls for collecting solids. Meanwhile, the well (14) of Opferkuch, Jr. et al. collects the solids inside of the port in order to discharge the solid particles.

Applicant states that the discharge port (14) is disposed at the center of the conical surface. The claim calls for the well to be non-centrally located within the container. Applicant further acknowledges that the discharge port is non-centrally located by disclosing that the discharge port is at the bottom of the container, which reinforces the position of the rejection.

Applicant has argued that Opferkuch, Jr. et al. neither shows nor suggests any form of a testing method for evaluating settling characteristics and where the sludge is drawn from the container by the discharge port is intended to test settling characteristics of the fluid. The preamble of the claim calls for a method for evaluating the settling characteristics of a fluid containing solid particles. The claim discloses no steps concerning testing.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.J.

February 28, 2005

Hezron E. Will
HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
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